



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

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Second District

ZEV YAROSLAVSKY
Third District

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Fourth District

MICHAEL D. ANTONOVICH
Fifth District

September 18, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name of the Chief Executive Officer.

SACRAMENTO UPDATE - REPORT ON A PROPOSED INITIATIVE TO REVISE THE MEDICAL INJURY COMPENSATION REFORM ACT OF 1975

On September 13, 2013, the Secretary of State released a proposed initiative for signature gathering titled: *Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute*. Proponents of the measure must gather 504,760 signatures from registered voters by February 10, 2014 to qualify the initiative for placement on the November 2014 State General Election ballot.

The proposed measure would increase the current \$250,000 cap on non-economic damages due to medical malpractice established in the Medical Injury Compensation Reform Act (MICRA) of 1975. The cap would increase to \$1.1 million effective January 1, 2015 based on the rate of inflation since 1975 and would be adjusted annually thereafter to reflect any increase in inflation as measured by the Consumer Price Index.

The proposed measure also would establish requirements for drug and alcohol testing of physicians. It would require every health care practitioner to report to the State Medical Board information regarding a physician who is impaired by drugs or alcohol while on duty, or who was responsible for the treatment of a patient during an adverse event and failed to follow the appropriate level of care. Hospitals would be required to

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conduct drug and alcohol tests of physicians as follows: 1) on a random basis; 2) immediately upon the occurrence of an adverse event on physicians responsible for the care and treatment of the patient during or 24 hours prior to the event; and 3) at the direction of the State Medical Board upon receipt of a referral from a third party indicating that a physician may have been impaired by alcohol or drugs while on duty. Physicians found to be drug or alcohol impaired while on duty or who refuse or fail to comply with testing provisions would be subject to disciplinary action.

According to the Legislative Analyst's Office (LAO), this measure would have a wide variety of fiscal effects on State and local governments. The LAO notes that raising the MICRA cap on non-economic damages would result in higher costs due to an increase in the amount of awards and settlements in medical malpractice cases, and higher costs due to an expected increase in the number of injury claims filed. The LAO indicates that higher malpractice costs would, in turn, increase cost for health care providers that self-insure and increase premiums for providers that purchase malpractice insurance. The LAO estimates that raising the cap on non-economic damages would increase medical malpractice costs for State and local government health care purchasers and providers by an average of 10 percent resulting in increased costs for health care at least in the low millions of dollars annually, potentially ranging to over \$100.0 million.

The Department of Health Services (DHS) reports that judgments and settlements arising from medical malpractice claims are generally incurred as net County cost. DHS indicates that any increase in the current MICRA cap would increase in County cost and would inevitably result in reduced resources available for every facet of patient care. DHS is committed to providing vital, high-quality health services to vulnerable populations, and diverting funds to pay for increased litigation expenses would not necessarily improve patient outcomes or produce higher quality medical care.

County Counsel reports County costs of approximately \$36.5 million in MICRA claims and settlements from September 2008 through March 2013, and concurs that an increase in the MICRA cap would result in significant increased County costs and exposure to additional claims for medical malpractice.

Should this measure qualify for the November 2014 General Election, there is existing Board-approved policy to oppose legislation that would revise MICRA to impede access, increase health care costs, and/or divert health care dollars from patients. However, positions on ballot measures are a matter for Board policy determination.

Each Supervisor
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This office will continue to closely monitor the status of the proposed MICRA ballot initiative and will work with County Counsel and the Department of Health Services to determine the potential County impact.

We will continue to keep you apprised.

WTF:RA
MR:VE:ma

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants